FIL

Supreme Court of the United States

OCTOBER TERM 1[illegible]

No. 7[illegible]

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

INDEX

	PAGE
Statement of Case	1
Statement of Facts	3
Question Presented	4
Constitutional and Statutory Provisions Involved	4
Argument	
1. Congress has clearly expressed its intention to confer upon the Government of Puerto Rico power to make the Puerto Rico Workmen's Compensation Law applicable to injuries sustained by employees while at work in the harbor areas or upon the territorial waters of Puerto Rico. Congress's intention has been expressed in such a clear fashion as to preclude any doubt as to the scope of the grant of power	7
2. The broad constitutional power of Congress to legislate for national territory and pursuant thereto to give Puerto Rico jurisdiction over its own waters is not limited by any basic constitutional principle	16
3. There are no special and important reasons presented by the petitioners why the decision of the Court of Appeals should be reviewed by this Court	20
Conclusion	22

Cases Cited

PAGE

Balzac v. *Puerto Rico*, 258 U.S. 298, 66 Led. 627 ..... 16, 17

Bridges v. *U.S.*, 346 U.S. 209, 97 Led. 1557 14

De Lima v. *Bidwell*, 182 U.S. 1, 21 S.Ct. 743, 45 Led. 1041 17

Domenick v. *National City Bank*, 294 U.S. 199, 55 S.Ct. 366, 79 Led. 857 17

Dorr v. *United States*, 195 U.S. 138, 49 Led. 128 17

Dowell v. *U.S.*, 221 U.S. 325, 55 Led. 753 17

Downes v. *Bidwell*, 182 U.S. 244, 21 S.Ct. 770, 45 Led. 1088 17

Flores v. *Pfann*, 178 F.Supp. 845, aff'd. sub nom. *Flores et al.* v. *Pfann*, 282 F.2d 153 ..... 7, 16

Grant Smith-Porter Ship Co. v. *Rohde*, 257 U.S. 469, 66 Led. 321 21

Granville-Smith v. *Granville-Smith*, 349 U.S. 1, 75 S.Ct. 553, 99 Led. 773 17

Great Northern R. Co. v. *U.S.*, 315 U.S. 262, 62 S.Ct. 942, 86 Led. 836 13

Guerrido v. *Alcoa Steamship Co., Inc.*, 234 F.2d 349 ..... 7, 10, 11, 17, 18, 21

Hecht v. *Malley*, 265 U.S. 144, 68 Led. 949 14

Inter-Island Steam Navigation Co. v. *Terr. of Hawaii*, 305 U.S. 306, 83 Led. 189 21

Knickerbocker Ice Co. v. *Stewart*, 253 U.S. 149, 40 S.Ct. 438, 64 Led. 834 ..... 12, 15

PAGE

Lastra v. *New York & Porto Rico S.S. Co., Inc.*, 2 F.2d 812, appeal dism'd 296 U.S. 536, ... 7, 10, 12, 14, 17, 19, 21

Latimer v. *U.S.*, 223 U.S. 501, 56 L.ed. 526 14

Ocampo v. *U.S.*, 234 U.S. 91, 58 L.ed. 1231 17

People v. *Central Aguirre Associates*, 59 P.R.R. 463 17

People of Puerto Rico v. *Shell Co.*, 302 U.S. 253, 58 S.Ct. 167, 82 L.ed. 235 ..... 17, 18

Rasmussen v. *U.S.*, 197 U.S. 516, 49 L.ed. 862 .. 14

Sancho v. *Bacardi Corporation of America*, 109 F.2d 57, rev'd on other grounds 311 U.S. 150, 61 S.Ct. 219, 85 L.ed. 98 19

Southern Pacific Co. v. *Jensen*, 244 U.S. 205, 37 S.Ct. 524, 61 L.ed. 1086 ..... 12, 15, 18

State of Washington v. *W. C. Dawson & Co.*, 244 U.S. 205, 37 S.Ct. 524, 61 L.ed. 1086 12

Texas Construction Co. v. *U.S.*, 236 F.2d 138 ... 14

United Porto Rican Sugar Co. v. *District Court*, 44 P.R.R. 904 14

U.S. v. *Elgin, J. & E. Ry. Co.*, 298 U.S. 492, 56 S.Ct. 841, 80 L.ed. 1300 13

West India Oil Company (P.R.) v. *Domenech*, 311 U.S. 20, 85 L.ed. 16 17

Wilcox v. *Consolidated Gas Co.*, 212 U.S. 19, 53 L.ed. 382 17

Statutes Cited

PAGE

Constitution, Article 4, Section 3, Clause 2 ..... 4, 17

Jones Act, 46 U.S.C. Section 688 ..... 3, 10, 13, 14

Supreme Court Rules, Rule 19, Subdivision 1 ... 4, 20
Supreme Court Rules, Rule 24 2

Puerto Rican Federal Relations Act, Title 48 U.S.C. Section 731e 8, 9, 11, 14, 21

Title 48 U.S.C. Section 731b 9
Title 48 U.S.C. Section 747 ..... 4, 9
Title 48 U.S.C. Section 749, Organic Act of 1917. 5, 8, 11, 12, 14, 21
Title 48 U.S.C. Section 826 ..... 13, 18

Workmen's Accident Compensation Act, Title 11 L.P.R.A.:

Section 1, et seq. 3, 10
Section 21 ..... 3, 6, 10

Supreme Court of the United States

OCTOBER TERM, 1960

No 709

ROBERTO GALINDO RAMOS,

Petitioner,

v.

SAN JUAN DREDGING CORPORATION,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Pursuant to the Rules of this Court, Respondent, the San Juan Dredging Corporation, respectfully submits the within brief in opposition to the Petition for Writ of Certiorari.

Statement of the Case

This suit was commenced on December 15, 1959 by the Petitioner, Roberto Galindo Ramos, plaintiff-appellant below, by filing a complaint in the United States District Court for the District of Puerto Rico. Petitioner sought relief under the general maritime law and the Jones Act of 1920, alleging that he had suffered an accident caused solely by the negligence of the Respondent.

Thereafter, the Respondent corporation filed a Motion for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, on the ground that there was no genuine issue as to any material

fact and that therefore Respondent was entitled to a judgment as a matter of law. Respondent's position was that the accident referred to in the complaint was covered by the Workmen's Accident Compensation Act of the Commonwealth of Puerto Rico, under which the Petitioner had been duly compensated. Respondent concluded that the compensation provided by the statute was the sole and exclusive remedy against the employer; that having received the benefits provided by said statute, the Petitioner was barred from instituting another action against the same insured employer for the same accident.

The District Court held that the Respondent was entitled to summary judgment as a matter of law and ordered that the complaint be dismissed. The opinion of the District Court is at 178 F. Supp. 845, *Flores* v. *Prann*.

On appeal to the United States Court of Appeals for the First Circuit, said Court of Appeals affirmed the District Court's dismissal of the complaint, by judgment dated September 15, 1960. The opinion of the Court of Appeals is reported at 282 F.2d 153. An order denying a petition for rehearing was issued on November 15, 1960, but has not yet been published.

An extension of time to petition for certiorari was granted by the Supreme Court to February 10, 1961. The petition for certiorari was filed in the Supreme Court on February 9, 1961 and was received by Respondent by mail on February 11, 1961. Therefore, pursuant to Supreme Court Rules, Rule 24, the last day for the filing of this brief in opposition, unless extended as provided by Supreme Court Rules, Rule 34, is March 13, 1961.

Statement of Facts

Respondent, San Juan Dredging Corporation, is a corporation organized under the laws of the Commonwealth of Puerto Rico and operates a dredge. On May 10, 1959, the date material herein, Respondent was an employer insured with the State Insurance Fund of the Commonwealth of Puerto Rico, and Petitioner was an employee of Respondent. On said date, Petitioner, while working on said dredge in the North Expressway project, a highway project being performed by Respondent near the Condado Laguna, San Juan, Puerto Rico suffered the injuries which are the subject of the present suit in the course of his functions as Respondent's employee.

The accident was reported to the State Insurance Fund of the Commonwealth of Puerto Rico and in accordance with the Workmen's Accident Compensation Act of Puerto Rico, 11 L.P.R.A. Section 1, et seq., the Petitioner applied for and was awarded compensation.

Petitioner then commenced the within action in the United States District Court for the District of Puerto Rico to recover under the Jones Act, 46 U.S.C., 1952 Ed. Section 688, for negligence and under the general maritime law for unseaworthiness. The District Court dismissed Petitioner's complaint on the ground that his only remedy was that afforded by 11 L.P.R.A. Section 21, and the Court of Appeals for the First Circuit affirmed.

Question Presented

Whether, in view of the clearly expressed intent of Congress to confer on the Government of Puerto Rico power to make its workmen's compensation law applicable to injuries sustained by employees while at work in the harbor areas or upon the territorial waters of Puerto Rico, pursuant to Congress's paramount constitutional power to legislate respecting the national territories, there is presented sufficiently special and important reasons for the Supreme Court to grant the petition for a writ of certiorari?

Constitutional and Statutory Provisions Involved

United States Constitution, Article 4, Section 3, Clause 2:

> "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State."

Supreme Court Rules, Rule 19, Subdivision 1:

> "A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. . . ."

48 U.S.C., 1952 ed., Section 747:

> "All property which may have been acquired in Puerto Rico by the United States under the ces-

sion of Spain in the treaty of peace entered into on the 10th day of December, 1898, in any public bridges, road houses, water powers, highways, unnavigable streams and the beds thereof, subterranean waters, mines or minerals under the surface of private lands, all property which at the time of the cession belonged, under the laws of Spain then in force, to the various harbor works boards of Puerto Rico, all the harbor shores, docks, slips, reclaimed lands, and all public lands and buildings not reserved by the United States for public purposes prior to March 2, 1917, is placed under the control of the government of Puerto Rico, to be administered for the benefit of the people of Puerto Rico; and the Legislature of Puerto Rico shall have authority, subject to the limitations imposed upon all its acts, to legislate with respect to all such matters as it may deem advisable."

48 U.S.C., 1952 ed., Section 749:

"The harbor areas and navigable streams and bodies of water and submerged lands underlying the same in and around the island of Puerto Rico and the adjacent islands and waters, owned by the United States on March 2, 1917, and not reserved by the United States for public purposes, are placed under the control of the government of Puerto Rico, to be administered in the same manner and subject to the same limitations as the property enumerated in sections 747 and 748 of this title. All laws of the United States for the protection and improvement of the navigable waters of the United States and the preservation

of the interests of navigation and commerce, except so far as the same may be locally inapplicable, shall apply to said island and waters and to its adjacent islands and waters. Nothing in this chapter contained shall be construed so as to affect or impair in any manner the terms or conditions of any authorizations, permits, or other powers lawfully granted or exercised in or in respect of said waters and submerged lands in and surrounding said island and its adjacent islands by the Secretary of the Army or other authorized officer or agent of the United States prior to March 2, 1917."

11 Laws of Puerto Rico Annotated, 1955 Ed., Section 21:

"When an employer insures his workmen or employees in accordance with this chapter, the right herein established to obtain compensation shall be the only remedy against the employer; but in case of accident to, or disease or death of, the workmen or employees not entitled to compensation under this chapter, the liability of the employer is, and shall continue to be, the same as if this chapter did not exist."

ARGUMENT

1. Congress has clearly expressed its intention to confer upon the Government of Puerto Rico power to make the Puerto Rico Workmen's Compensation Law applicable to injuries sustained by employees while at work in the harbor areas or upon the territorial waters of Puerto Rico. Congress's intention has been expressed in such a clear fashion as to preclude any doubt as to the scope of the grant of power.

The Court of Appeals for the First Circuit stated in its opinion in this case (282 F.2d 153 at p. 156) that:

> "Our problem, therefore, is not one of constitutional limitations. It is one of statutory interpretation. It is whether Congress in the exercise of its constitutional power under Article IV, Section 3, Clause 2, to legislate for national territory has in fact seen fit to confer on the Government of Puerto Rico power to make its workmen's compensation law applicable to injuries sustained by employees while at work on its territorial waters."

The Court of Appeals answered the question posed, as it had done on two previous occasions [*Lastra* v. *New York & Porto Rico S.S. Co., Inc.*, 2 F.2d 812 (1924), appeal dismissed for lack of jurisdiction, 296 U.S. 536 (1925) and *Guerrido* v. *Alcoa Steamship Co., Inc.*, 234 F.2d 349 (1956)], vigorously in the affirmative, to wit, that Congress had, in unmistakable

terms, seen fit to confer such power upon the Government of Puerto Rico.

In expressing this purpose, Congress's language was broad and unequivocal. In 1917 the Organic Act of Puerto Rico was enacted, expressly providing in Section 8 thereof that:

> ". . . the harbor areas and navigable streams and bodies of water and submerged land underlying the same in and around the island of Puerto Rico and the adjacent islands and waters now owned by the United States and not reserved by the United States for public purposes be, and the same are hereby, *placed under the control of the Government of Puerto Rico*, to be administered in the same manner and subject to the same limitations as the property enumerated in the preceding section: Provided, That all laws of the United States for the protection and improvement of the navigable waters of the United States and the preservation of the interests of navigation and commerce, *except so far as the same may be locally inapplicable, shall apply to said island and waters* and to its adjacent islands and waters . . ." [39 Stat. 954 (1917), 48 U.S.C.A. Section 749 (1952); this section was literally reenacted in the Puerto Rican Federal Relations Act, Section 8, 64 Stat. 319 (1950), 48 U.S.C.A. Section 731e (1952)]. (Emphases supplied.)

In order to insure the reasonable use of such delegated power to the local government, Congress also provided in Section 7 of the Organic Act of 1917 that the public property which was therein being placed

under the control of the Government of Puerto Rico was:

> "to be administered for the benefit of the People of Puerto Rico; and the Legislature of Puerto Rico shall have authority, subject to the limitations imposed upon all its acts, *to legislate with respect to all such matters as it may deem advisable*". [39 Stat. 954 (1917), 48 U.S.C.A. Section 747 (1952); this section also was literally reenacted in the Puerto Rican Federal Relations Act, Section 7, 64 Stat. 319 (1950), 48 U.S.C.A. Section 731e (1952)]. (Emphasis supplied.)

Thus, Congress transferred certain public property, including the unnavigable and navigable waters, to the Government of Puerto Rico, placed that property under the plenary control of the Government of Puerto Rico, and specifically granted the local legislature the power to legislate in this area.

In 1950, in accordance with Public Law 600, 64 Stat. 314 (1950), 48 U.S.C.A. Section 731b (1952), the People of Puerto Rico was authorized to organize a government pursuant to a constitution of its own adoption. Said public law retained those provisions of the Organic Act of 1917 pertinent to the problem herein, continuing them in effect; with no modification, as the Puerto Rican Federal Relations Act. [64 Stat. 319 (1950), 48 U.S.C.A. Section 731e (1952)]. Therefore, under its Commonwealth status, by express provision Puerto Rico retained the same general power of legislation in the field of maritime law that it had under its territorial status.

Pursuant to this Congressional authority, the Puerto Rican legislature approved a Local Workmen's Accident Compensation Act in 1918 [Act No. 10 of February 25, 1918, Laws of Puerto Rico p. 54 (1918); this statute was succeeded by Acts passed in 1928 and 1935, the latter still in force as 11 L.P.R.A. Section 1, et seq.]. The present Workmen's Accident Compensation Act, provides an exclusive remedy in cases covered by the law, to the exclusion of any other judicial remedy (11 L.P.R.A. Section 21).

In *Lastra*, supra, the Court of Appeals for the First Circuit held in 1924 that the Puerto Rican Workmen's Accident Compensation Act passed in 1918 was applicable to maritime workers, to the exclusion of the provisions of the Jones Act of 1920, 46 U.S.C.A. Section 688 (1952). The Court's conclusion was based upon the pertinent provisions of the Organic Act of 1917 which, it was felt, were sufficient to provide the Legislature of Puerto Rico with general legislative powers concerning Puerto Rican waters. In 1956 the Court of Appeals for the First Circuit, in *Guerrido*, supra, after exhaustively reviewing the legislative history of the maritime law as applied to Puerto Rico, adhered to the conclusion in *Lastra* and held that (p. 355 of 234 F.2d):

> "we still think, as we indicated in the *Lastra* case, that Congress intended by section 8 of the Jones Act to give the Legislature of Puerto Rico full power to provide compensation for marine workers injured in Puerto Rican waters to the exclusion of the remedies against their employers provided by the American maritime law."

Confronted once again with the question of interpretation of the Congressional grant to the Legislature of Puerto Rico, the Court below stated (p. 156 of 282 F.2d):

> "in *Lastra* and *Guerrido* this court held and we agree that Congress in the valid exercise of powers conferred upon it by the Constitution gave the Legislature of Puerto Rico power to enact legislation inconsistent with the Jones Act and the general maritime law, and that the Legislature of Puerto Rico had exercised its power in its Workmen's Accident Compensation Act."

Both in *Guerrido* and in its opinion below, the Court of Appeals recognized that neither the Jones Act nor the general maritime law of unseaworthiness are inherently inapplicable in Puerto Rico, but that neither the Jones Act nor the general maritime law had been made specifically applicable in the territorial waters of Puerto Rico by Congress. Thus, the opinion below noted that (p. 157):

> "Of course if Congress sees fit it may supplant the local legislation as it applies to local navigable waters by making the Jones Act and the general maritime law of unseaworthiness specifically applicable in Puerto Rican waters, but it is not our function to do so."

Neither would it be proper for this Court to displace the clearly expressed intention of Congress.

This Congressional policy was reflected not only in the precise words of the Organic Act of 1917, the Puerto Rican Federal Relations Act, and the three successive interpretations of those statutes by the

Court of Appeals for the First Circuit, but also in Congressional legislation contemporaneous with the Organic Act of 1917 which indicates that it was then the Congressional mood to permit application of local law to injuries suffered by employees on local navigable waters.

In *Southern Pacific Co.* v. *Jensen*, 244 U.S. 205, 37 S.Ct. 524, 61 L.ed. 1086, decided in May, 1917, this Court had held the New York Workmen's Compensation Act inapplicable to maritime laborers. Attempting to overcome the effect of *Jensen*, in October, 1917 Congress amended the Judicial Code to save to claimants rights and remedies under the workmen's compensation laws of any state. This amendment was struck down in *Knickerbocker Ice Co.* v. *Stewart*, 253 U.S. 149, 40 S.Ct. 438, 64 L.ed. 834 (1920) as an unconstitutional delegation of Congressional authority to the states. In 1922 a further attempt by Congress to permit application of workmen's compensation acts to certain classes of maritime employees was also held unconstitutional with reference to a state workmen's compensation statute in *State of Washington* v. *W. C. Dawson & Co.*, 244 U.S. 205, 37 S.Ct. 524, 61 L.ed. 1086 (1924).

The Organic Act of 1917 was passed in the same year in which Congress undertook to provide that compensation acts should, in the states, apply to such maritime laborers as those whose rights are now in question. As stated in *Lastra*, supra, (p. 815):

> "It is not reasonable to suppose that the same Congress intended to take away from Puerto Rico rights in the admiralty field which it sought

> to extend to the different states of the U.S. Emphasis is lent to this conclusion by the fact that in 1922 it indicated in the most explicit language its purpose to allow such acts full scope, not only in the states of the United States, but in any 'district, territory or possession of the United States.'"

Furthermore, it is a rule of statutory interpretation and construction that when a law is enacted, the legislature is held to be aware of pre-existing laws and therefore, if those laws are not amended or repealed, the presumption is that the legislature intended to maintain the status quo. *Great Northern R. Co.* v. *U.S.*, 315 U.S. 262, 62 S.Ct. 942, 86 L.ed. 836 (1942), *U.S.* v. *Elgin, J & E. Ry. Co.*, 298 U.S. 492, 500, 56 S.Ct. 841, 80 L.ed. 1300 (1936). The Jones Act of 1920 (41 Stat. 1007) was adopted more than three years after the Organic Act of 1917 and well after Puerto Rico, in 1918, in the exercise of the legislative powers granted it by Congress to legislate regarding all matters pertaining to harbor areas and bodies of water in and about the Island, had adopted a Workmen's Compensation Act providing for compensation as the exclusive remedy. It must be assumed that this 1918 Workmen's Compensation Act was reported to Congress as required by the Organic Act of 1917, Section 34 thereof [48 U.S.C.A. Section 826 (1952)]. Congress refrained from annulling that act under its reserved powers. Had Congress thought at the time of its approval of the Jones Act of 1920 that exertion of the power conferred upon Puerto Rico in 1917 had been obnoxious to some principle of uniformity, or contrary to the true purpose of the Congress, Congress could have extended

coverage of the Jones Act to Puerto Rico. Nothing of the sort was done.

In 1950 the Puerto Rican Federal Relations Act, was approved by Congress, literally reenacting the provisions of the Organic Act of 1917 relevant herein. As has been seen, between 1917 and 1950, judicial interpretations had been rendered whereby application of the local act to maritime workers had been recognized. [*Lastra and United Porto Rican Sugar Co.* v. *District Court*, 44 P.R.R. 904 (1933)]. Congress was aware of this legal situation. Had it sought to change the interpretation of its Organic Act of 1917, Congress would have expressly so provided in the 1950 Puerto Rican Federal Relations Act. Failure to make any such change compels the conclusion that the *Lastra* doctrine had full Congressional approval. See *Texas Construction Company* v. *United States*, 236 F.2d 138, 140 (C.A. 5, 1956), *Latimer* v. *U.S.*, 223 U.S. 501, 504, 56 L.ed. 526 (1912), *Hecht* v. *Malley*, 265 U.S. 144, 153, 68 L.ed. 949 (1924), *Bridges* v. *U.S.*, 346 U.S. 209, 221, 97 L. ed. 1557, 1568 (1953).

Petitioner has made the feeble contention that by enactment of the Jones Act of 1920, Congress preempted the field to the exclusion of local legislation. Whether Congress did preempt the field with the Jones Act of 1920 is purely a matter of Congressional intent. *People of Puerto Rico* v. *Shell Co.*, 302 U.S. 253, 58 S.Ct. 167, 82 L.ed. 235 (1937). The entire legislative and judicial history of the Organic Act of 1917, as outlined above, proves conclusively that Congress never intended the Jones Act of 1920 to be applicable to seamen injured while working in territorial waters in or around the Island of Puerto Rico.

Petitioner also contends that the opinion below destroys the uniform application of the general admiralty and maritime law. It is, of course, clear that absolute uniformity in maritime matters is not a *constitutional* requirement. See infra, pp. 18-19. Whether uniformity is desirable as a matter of *policy* is an issue for Congress to determine and it is perfectly obvious that Congress intended to clothe the Government of Puerto Rico with power to provide for the application of its Workmen's Accident Compensation Act to injuries suffered by employees on local navigable waters. See the dissent of Justice Holmes in *Jensen* and that of Justice Brandeis in *Knickerbocker*, for examples of the lack of uniformity in the law of admiralty even as applied in the continental United States.

Therefore, Petitioner's argument that Congress did not intend to give the Legislature of Puerto Rico power to enact legislation inconsistent with the Jones Act and general maritime law is patently repudiated by the legislative and judicial history of the Puerto Rican Federal Relations Act and thereby presents no issue befitting a full dress hearing by this Court.

2. The broad constitutional power of Congress to legislate for national territory and pursuant thereto to give Puerto Rico jurisdiction over its own waters is not limited by any basic constitutional principle.

The Court of Appeals below correctly construed the issue raised by this case as one of statutory interpretation rather than constitutional limitation.

Petitioner has, nevertheless, attempted to raise a constitutional issue by citing the *Jensen*, *Knickerbocker* and *Dawson* decisions as allegedly in conflict with the Court below.

Those three Supreme Court cases are, as the Court of Appeals recognized at p. 155 of its opinion, entirely distinguishable with respect to the issue posed here. Those

> "decisions impose constitutional restrictions on the power of the States and on the power of Congress to delegate its legislative powers to the *States*. But, whatever the actual status of the Commonwealth of Puerto Rico may be in all its details, its present status is certainly not that of a *State* of the United States. Nor is it even that of a territory incorporated into the union preparatory to statehood." (citing *Guerrido*) (emphasis supplied).

Puerto Rico is a possession of the United States, a territory of the national government that has not been incorporated into nor *made a part of the Union*. *Balzac* v. *Puerto Rico*, 258 U. S. 298, 66 Led. 627.

Granville-Smith v. *Granville-Smith*, 349 U.S. 1, 75 S.Ct. 553, 99 L.ed. 773, *Domenich* v. *The National City Bank*, 294 U.S. 199, 204, 55 S.Ct. 366, 369, 79 L. ed. 857.

As a result of its unique status, the provisions of the Constitution are not applicable *ex propio vigore* to Puerto Rico. *People* v. *Central Aguirre Associates*, 59 P.R.R. 403 (1941), *Downes* v. *Bidwell*, 182 U.S. 244, 21 S.Ct. 770, 45 L.ed. 1088 (1901), *Dorr* v. *United States*, 195 U.S. 138, 49 L.ed. 128 (1903), *Rasmussen* v. *U.S.*, 197 U.S. 516, 49 L.ed. 862 (1905), *Wilcox* v. *Consolidated Gas Co.*, 212 U.S. 19, 53 L.ed. 382 (1908), *Dowell* v. *U.S.*, 221 U.S. 325, 55 L.ed. 753 (1910), *Ocampo* v. *U.S.*, 234 U.S. 91, 58 L.ed. 1231 (1913), *Balzac, People of Puerto Rico* v. *Shell Co.*, 302 U.S. 253, 82 L.ed. 235 (1937), *West India Oil Company (P.R.)* v. *Domenech*, 311 U.S. 20, 85 L.ed. 16 (1940), *Lastra*.

The broad and virtually absolute power of Congress, under Article IV, Section 3, Clause 2 of the Constitution, to legislate for national territories is limited under the doctrine of the Insular Cases [*De Lima* v. *Bidwell*, 182 U.S. 1, 21 S.Ct. 743, 45 L.ed. 1041, (1901), *Downes* v. *Bidwell*, 182 U.S. 244, 21 S.Ct. 770, 45 L.ed. 1088 (1901) and subsequent cases confirming and applying their doctrine], only by fundamental constitutional principles and not by the host of constitutional provisions which narrow Congress's legislative authority in respect to States of the Union.

Neither in *Lastra, Guerrido* nor in its opinion below, was the Court of Appeals aware of any basic principle of the Constitution which prevented Congress

from giving Puerto Rico jurisdiction over its own waters. The exercise by Puerto Rico of legislative powers granted it by the Congress is the exercise of the same sovereignty as that exercised by Congress, not a different one. *People of Puerto Rico* v. *Shell Co.*, supra, at p. 264 (Thus, Congress has remained in complete control of Puerto Rican legislation, the Organic Act of 1917 (48 U.S.C.A. 826 (1952) providing:

> "All laws enacted by the Legislature of Puerto Rico shall be reported to the Congress of the United States as provided in section 842 of this title, which reserves the power and authority to annul the same. . . .").

As a result, *Jensen*, *Knickerbocker* and *Dawson* have absolutely no relevance here, inasmuch as they do not,

> "indicate a similar lack of power to act with respect to Puerto Rico. For what Congress could not constitutionally delegate to the legislature of a state as the organ of an independent sovereignty, it might well be able to delegate to the legislature which it had created for a territory which it had organized. (citing cases)." (*Guerrido* supra, at p. 356).

Not only is absolute uniformity in maritime matters not an unwavering policy, supra p. 15, it is also not a constitutional requirement. See opinion below supra, at p. 157. Thus, even with respect to States, Justice McReynolds writing for the majority in *Jensen* stated (p. 216):

> "In view of these constitutional provisions and

> the Federal act it would be difficult, if not impossible, to define with exactness just how far the general maritime law may be changed, modified, or affected by state legislation. *That this may be done to some extent can not be denied* (giving examples)." (emphasis supplied)

See also dissents of Justice Holmes in *Jensen* and Justice Brandeis in *Knickerbocker*.

Even if uniformity in maritime matters was constitutionally imposed upon the States, and it was not, no such inhibition could be imposed upon Puerto Rico. Although, for example, a policy of uniformity exists with respect to interstate commerce, in *Sancho v. Bacardi Corporation of America*, 109 F.2d 57, rev'd on other grounds 311 U.S. 150, 61 S.Ct. 219, 85 L.ed. 98, it was admitted that Puerto Rico could pass valid legislation regulating foreign and interstate commerce under its Congressional grant of legislative power, even though a state could not properly do so. See also *Lastra* supra, at p. 814."

For Petitioner to prevail in his contention of the unconstitutionality of local regulation of maritime waters, this Court would have to reverse *Lastra*, *Guerrido* and the Court below, and declare the pertinent provisions of the Puerto Rican Federal Relations Act unconstitutional. Nothing in law warrants such an action.

3. There are no special and important reasons presented by the petitioner why the decision of the Court of Appeals should be reviewed by this Court.

A review on writ of certiorari is not a matter of right, and is granted only for special and important reasons. Supreme Court Rules, Rule 19. Petitioner has failed to carry his burden of showing the existence of the special bases for the exercise of jurisdiction by this Court.

Petitioner's argument that this case raises important questions of federal law is, as shown above, not borne out by the consistent legislative and judicial interpretation of the grant of power by Congress to the legislature of Puerto Rico (see Point I supra). Furthermore, the boundaries of sovereignty of Puerto Rico with reference to the application of the provisions of the United States Constitution has been sufficiently adumbrated by the case law (see Point II supra). The series of questions raised by Petitioner in Point "1" of his Argument are entirely moot and academic with reference to the precise issue raised by this case and are, therefore, not reviewable.

Petitioner's Point "2" alleges a conflict between the opinion below and several decisions of this Court. The Supreme Court decisions cited apply only to states of the Union and not to the distinct political entity of Puerto Rico (supra pp. 16, 18).

A similar attempt by Petitioner in his Point "3" to cite cases allegedly in opposition to the opinion of the Court of Appeals in this case must also fail. Every

case referred to in that section of Petitioner's argument refers to compensation acts promulgated by state legislatures, with the exception of *Guerrido*. Petitioner's attempt to read *Guerrido* as being irreconcilable with the decision at bar is abortive and will not withstand even a cursory perusal of *Guerrido*.

Petitioner's reference to the doctrine of "local concern" is in brief, misleading. *Guerrido* follows the general rule that in matters of "local concern"—and control of territorial waters in Puerto Rico falls within that term by express provisions of Section 7 of the Organic Act of 1917 and the Puerto Rican Federal Relations Act of 1950—only the plainly expressed will of the United States is to prevail as against the presumption of local control over matters of local concern. See *Lastra* supra, at p. 815, and *Inter-Island Steam Navigation Co.* v. *Terr. of Hawaii*, 305 U.S. 306, 83 L.ed. 189 (1938). Even states may make their local Workmen's Compensation Acts cover exclusively injuries received in the course of the work, thereby excluding the jurisdiction of admiralty law over the claim, wherever the work being performed at the time of the accident is a matter of mere local concern, and its regulation by the State would work no material prejudice to the characteristic features of the general maritime law. See *The Grant Smith-Porter Ship Co.* v. *Rohde*, 257 U.S. 469, 66 L.ed. 321 (1922), *Millers' Indemnity Underwriters* v. *Braud*, 270 U.S. 59, 70 L.ed. 470 (1926). In this case the Petitioner was working on a dredge in a highway project, a type of job of a typically local nature.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the petition for writ of certiorari should be denied.

SYDNEY KRAUSE
521 Fifth Avenue
New York 17, New York
Counsel for Respondent San Juan Dredging Corporation

S. L. LAGARDE GARCÉS
LUIS E. GARCIA BENITEZ
Of Counsel